

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NICOLAS LAMENDOLA,

CASE NO. 1:18-cv-00163-KBM-SCY

Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF TAOS, and JOHN
DOES 1 - 10

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE TO AMEND
HIS FIRST AMENDED COMPLAINT**

COMES NOW Plaintiff NICOLAS LAMENDOLA ("Plaintiff"), by and through her attorneys Alan H. Maestas and Kathryn J. Hardy (ALAN MAESTAS LAW OFFICE, P.C.), pursuant to Fed. R.Civ.P. Rules 15(a)(2) moves for leave to amend his First Amended Complaint:

1. Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and concurrently with the New Mexico Human Rights Division ("NMHRD") alleging that Defendant TAOS COUNTY SHERIFF'S OFFICE, which is synonymous with the THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF TAOS, for the purposes of jurisdiction, unlawfully discriminated against him based on his disability and/or perceived disability.¹ On or about April 27, 2017, Plaintiff received the EEOC's Right to Sue letter; and then on May 4, 2017, the NMHRD issued Order

¹ When Plaintiff filed his charge of discrimination, the EEOC agent assisting him in pro se, advised him to name TAOS COUNTY SHERIFF'S OFFICE as the party to be charged, and thus, Plaintiff did as was instructed.

of Non-determination, pursuant to NMHRA 28-1-10 (D). Plaintiff has timely filed this appeal, and the Court's jurisdiction is proper, pursuant to NMSA 1978, § 28-1-13 (2005).

2. Plaintiff then filed a complaint and Notice of Appeal in the Eighth Judicial District, County of Taos, State of New Mexico on July 26, 2017.

3. Plaintiff then filed an Amended Complaint on January 4, 2018 and served Defendants the Summons and Amended Complaint shortly thereafter.

4. Defendants then removed Plaintiff to Federal Court on February 19, 2018.

5. Defendants did not file an Answer or any other responsive pleadings pursuant to Fed.R.Civ.P. 7(a).

6. Instead, Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6) on February 28, 2018. (Document No. 4). This motion to dismiss alleged that Plaintiff did not name the proper party, pursuant to NMSA Section 4-46-1 and Fed.R.Civ.P 17(b).

7. This Court heard the matter on April 19, 2018; and requested supplemental briefing.

8. On September 6, 2018, after the supplemental briefing was completed, this Court filed its Memorandum and Order (Document 24), granting Defendant's motion to dismiss but allowing Plaintiff to file an amended complaint by September 14, 2018, in order for Plaintiff to add THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF TAOS as a party, pursuant to NMSA Section 4-46-1 and Fed.R.Civ.P 17(b).

9. Thus, pursuant to said Court Memorandum and Order (Document 24) and Fed.R.Civ.P. 15(a)(2), Plaintiff now moves the Court to grant him leave to amend his First Amended Complaint to comply with said Order and replace the County party formerly

identified as “TAOS COUNTY SHERIFF’S OFFICE” with the proper title set out by NMSA Section 4-46-1, which is that of “THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF TAOS”. However, Plaintiff proceeds with the understanding that the effect pertaining to notice and all other aspects pertaining to the parties’ legal rights in this case, regarding the naming of the County defendant, to be resolved in that the “TAOS COUNTY SHERIFF’S OFFICE” for all other purposes than naming the county party pursuant to NMSA Section 4-46-1, are substantively synonymous.

10. Plaintiff has attached his proposed Second Amended Complaint to this motion, as Exhibit A.

CONCLUSION

Plaintiff requests this Court allow him Leave to Amend her First Amended Complaint to change the county defendant party name from TAOS COUNTY SHERIFF’S OFFICE to THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF TAOS, pursuant to the Court’s Memorandum and Order dated September 6, 2018 (Document 24) and Fed.R.Civ.P. 15(a)(2).

Respectfully submitted,

ALAN MAESTAS LAW OFFICE, P.C.

/s/Kathryn J. Hardy

KATHRYN J. HARDY

ALAN H. MAESTAS

224 Cruz Alta Road, Suite H

Taos, New Mexico 87571

Telephone: (575) 737-0509

Facsimile: (575) 758-2497

E-mail: alan@alanslaw.com

kathryn@alanslaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2018, a true and correct copy of the foregoing was submitted *via* the CM/ECF case filing system for the United States District Court for the District of New Mexico, which caused the following parties of record to be served:

DEFENDANT:

TAOS COUNTY
SHERIFF'S OFFICE

Represented by: MARK DREBING
BRANDON HUSS
NEW MEXICO ASSOCIATION OF
COUNTIES, 111 Lomas Blvd.,
N.W., Ste. 424, Albuquerque, NM
87102; Telephone: (505) 820-8116;
E-mails: mdrebing@nmcounties.org
and bhuuss@nmcounties.org